IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL Nos. C/435,460/2012

(Arising out of Order-in-Original CAO No. 09/2012/CAC/CC/BKS dated 27.2.2012 passed by Commissioner of Customs (Adjudication), Mumbai)

Unique Trading Co. **Appellants**
Pantaloon Retail (I) Ltd.

Vs.

Commissioner of Customs (I), Nhava Sheva **Respondent**

Appearance:

Shri Amit Singh and Shri Anil Balani, Advocates, for appellants
Shri R. Kumar, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

Date of Hearing: 17.9.2018
Date of Decision: 24.10.2018

ORDER No. A/**87758-87759/2018**

Per: P. Anjani Kumar

M/s. Pantaloon Retail (I) Ltd. and M/s. Unique Trading Co. have filed appeals No. C/460/2012 and C/435/2012 respectively. Both the appeals are directed against order-in-original No. 09/2012/CAC/CC/BKS dated 27.2.2012. As the issue involved in both the cases is identical, the appeals are taken up together.

2. Briefly stated the facts of the case are that the Directorate of Revenue Intelligence (DRI) investigated the cases of overvaluation of exports by some merchant exporters, namely M/s. Nidhi Textiles, M/s. Milan Exports, M/s. Madhuri Impex Pvt. Ltd., M/s. Madhuri Synthetics, M/s. Mahavir Synthetics and M/s. Laxminath Exports. The allegation against the exporters was that they have inflated the FOB value of their exports significantly and obtained the DEPB scrips/DFIA licences against such exports and have sold the scrips to various transferees on the basis of endorsement of transferability by the DGFT. Both the appellants in the present appeals are such transferees of DEPB scrips, who have imported certain goods against such scrips availing exemption under Notifications No.89/2005-Cus. and 40/2006-Cus. On completion of the investigation, the DRI issued show cause notices to the exporters as well as the transferees i.e. importers. The impugned order was issued confiscating the goods imported and demanding duty and penalties from the importers. During the pendency of the investigation, the DGFT has cancelled all the DEPB scrips/DFIA licences *ab initio*.

3. The appellants have submitted that the issue is no longer *res integra* and the Tribunal in the case of *Sumit*

Wool Processors and others vs. CC(Import)/(Export) – 2015-TIOL-2090-CESTAT-MUM, has decided the issue in favour of the appellants, holding that the transferees in the cases had no knowledge of misrepresentation by the exporters and in view of the above, confiscation of the goods imported by the appellants who are transferees of the licences/scrips does not arise. The demands of duty and penalties against them are set aside.

4. Learned counsel for the appellants submitted that these appeals somehow remained to be bunched along with the appeals decided by the Tribunal vide the above cited order.

5. Learned AR for the Revenue reiterated the findings in the order-in-original.

6. Heard both sides and perused the records.

7. We find that the issue is squarely covered by the decision of this Tribunal in the case of *Sumit Wool Processors and others vs. CC(Import)/(Export)* (supra). We find that these appeals are also arising out of the same order of the learned Commissioner (Adjudication), which was set aside vide the order cited above.

8. In view of the above, we allow the appeals.

(Pronounced in court on 24.10.2018)

(S.K. Mohanty) **Member (Judicial)**	**(P. Anjani Kumar)** **Member (Technical)**

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